

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:

BEAUX LANE (SA) PROPERTIES (PTY) LIMITED

Plaintiff

and

SNOWY OWL PROPERTIES 310 (PTY) LTD

1st Defendant

STEPHAN LOTHAR KUHN

2nd Defendant

SUMMARY OF THE J U D G M E N T

WEINER J:

Amendment: withdrawal of admission :

The plaintiff issued summons against the defendants on the basis of breach of a lease agreement in respect of the first defendant and on the basis of a deed of suretyship against second defendant. Plaintiff relies upon a lease agreement concluded in January 2009.

The defendants entered a special plea, plea and conditional counterclaim. The defendants applied to amend the plea by inserting a further special plea. They contend that the applicable lease agreement is one between the plaintiff and Busicor 0055 CC ("Busicor"), and not the first defendant, entered into on 16 September 2008. They argue that the lease agreement concluded in January 2009 is not the operative agreement and therefore the plaintiff has no claim against the defendants.

The plaintiff objected to the amendment on the basis that it amounted to a withdrawal of an admission. They referred to several instances in the plea and summary judgment affidavit in which allegations made could only be seen as admission of the existence of the January lease agreement. The defendants contend that the January agreement was always in dispute and that throughout the pleadings and the summary judgment affidavit a general denial is reflected. As a consequence of the denial of the January lease agreement, a conditional counterclaim was instituted, conditional upon a finding that the January lease agreement was indeed valid and binding. They therefore submit that the amendment does not amount to a withdrawal of an admission.

The plaintiff further objected to the amendment on the basis of its timing. It comes 3 years after the institution of the action. Defendants allege that the Busicor lease was only furnished to them in October 2012.

If the amendment amounted to a withdrawal of an admission, a full explanation was required to convince the court of the *bona fides* thereof since it is more likely to prejudice the other party.

The court found that the plaintiff had failed to show that the amendment was prejudicial and that it was not *bona fide*. The proposed amendment raised a triable issue, both on the facts and on the law.

Held: the amendment was granted but the costs were to be paid by the Defendants.